First Principles.

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Getting Organized Against Government Spying: A Report

BY CHRISTINE M. MARWICK

Tactics and Targets

Much of the discussion at the Conference on Government Spying (held in Chicago this January 20-23) concerned the art of generating public support so that the political police operations of our intelligence agencies can be brought to an end.

The problems which have to be solved in order to organize a movement against a secret police apparatus are also, in a way, a definition of the issue. People are reluctant to believe what has gone on, or, knowing the facts, are reluctant to follow them to their logical conclusion — that nothing short of comprehensive reforms will prevent a resurgence of government interference with political activity.

The Conference focused on a combination of three main areas for generating public support against political spying in America. To be effective, these must be coordinated and undertaken at the federal, state, local, and private levels.

First, lawsuits for civil damages against agencies and officials are proving an effective tool. They can expose unknown programs, muster the support of the courts and/or the community, and demonstrate where the laws which are currently on the books do not protect essential political rights and need to be changed.

Second, law suits tie into another channel for change — getting the issue into the press. The public has to be educated about not only what has gone on but also what is still going on, what

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.

THOMAS PAINE

should be changed, and what will produce real rather than cosmetic reforms.

And third, the final tool for reform is in the country's legislatures. The momentum established by litigation and press coverage must be carried through in statutes against spying on political activities. Public pressure must be built up for enacting laws that can ensure that abuses of secret power cannot happen again.

Civil courts, the press, the legislatures, then, are the forums where the problem of political surveillance can be addressed. But in doing this there is an additional factor which must be kept in mind, and that is the sheer scope of the problem and the resources of an intelligence network which includes federal, state, local, and "private" levels of society.

It would be too easy to concentrate the reform effort on the federal agencies, and end up allowing the state, local, and "private" sectors to expand and fill the vacuum. Investigations of local operations typically end up as news in only one locality, while the federal agencies are automatically considered newsworthy. The investigations of the FBI, CIA, NSA, IRS, military intelligence and the rest have gotten a great deal of press coverage, but one result is that the abuses seem to be a federal phenomenon. Everything else then tends to look like an isolated fluke instead of being what it is — part of a hydra-headed system, where when one head is cut off, another grows to take its place. History shows, for example, that when the federal domestic intelligence apparatus lay dormant between 1920 and 1939, local "red squads" flourished. There is no reason why the same thing could not happen again, especially if there are loopholes which allow federal agencies to continue to train and/or fund red squads.

But regulating governments — federal, state, or local — is in many ways a relatively easy task compared to coping with the least known segment of the intelligence network. For there also exists something of which we were little aware only a short time ago — the "private" intelligence agencies. The article on page 10 describes the workings of the Law Enforcement Intelligence Unit, but there are others. Private corporations, such as Chrysler, have their own political intelligence systems; private detective agencies, such as Wackenhut, have long been used for political spying and maintain extensive files on citizens. There are also the militant right-wing organizations, such as SAO in San Diego and the Legion of Justice in Chicago, who have evidently had illegal activities farmed out to them by police agencies. And there is a publication called "Information Digest," which offers a "private" alternative to official dissemination of information on political activities.

There are also new technological threats which make the intelligence systems difficult even to understand, much less control. Spying technology and data systems have entered the space-age but we have only horse-and-buggy era laws to regulate them.

And finally, it is one measure of the scope of the problem that the intelligence network has some substantial tactical advantages over the groups which are trying to bring them under control. In court, they have (compared to the plaintiffs) unlimited financial resources, the physical possession of the evidence, and benefit of the general assumption that the government cannot, by definition, break the law. In the press, they have practiced and effective propaganda techniques. And in legislatures, they have long had their advocates to take care of their interests.

Litigation

The Conference's workshop for litigators has provided the start of being able to readily pass the experience of the many red squad suits which have already gotten underway among interested people and organizations. Chicago's Better Government Association produced a litigation manual[1] for the workshop, and there are now plans for putting together a library for documents coming out of such suits.

Suing for a civil damages and injunctive relief is the first line of attack against political police operations. Prosecutors (even when they have produced good reports on systematic abuses of police power, such as the Cook County Grand Jury Report[2]) have not yet proven that they are willing to use the existing laws against government officials.

But in civil suits, citizens can sue on their own behalf and step outside of the old-boy system which exists between prosecutors and police and between the Justice Department and the federal intelligence agencies.

What Litigation Can Do

Litigation is a mixed blessing. It presents both opportunities and dangers. It can offer relief — damages awarded to the victims, judgments declaring policies and programs illegal or unauthorized, and injunctions against continuing programs. The information dug out in court can be used to educate society — courts, public, and legislatures alike — about the political police problem. And such grappling with the issues in the judicial forum can show dramatically where the holes in existing law are; there are, for example, no laws regulating *any* of the uses of paid informers.

But there are problems. The record of judges sympathies to the plaintiffs in anti-spying litigation is mixed. In some suits, such as with Judge Griesa in the *SWP* case[3] and Judge Kirkland in the *Alliance/ACLU* suit,[4] judges from politically conservative backgrounds have been sufficiently aghast at the sheer weight of evidence presented and at the kinds of obstruction which the government has practiced that they have become sympathetic in the course of the litigation. It is possible for the judicial attitudes, as well as public opinion, to change.

In the *Hampton*[5] suit, however, Judge Perry's sympathies are clearly with the government, although even there the court has found itself having to deal with open noncompliance with its orders.

But even where the judge is, to say the least, unsympathetic, as in the *Hampton* suit, valuable new information has come out. When Fred Hampton was killed, the public cried foul, but it is only in the past year that the seven-year-old lawsuit dug out documents showing that it was the FBI that had orchestrated the States Attorney's fatal assault on Hampton's apartment.

All this shows that court ordered discovery, even from an unsympathetic judge, can produce critical new information about the character and extent of "intelligence" operations, and that it pays to litigate violations of your rights. For another example, it seems safe to say that after the FBI's debacle with their SWP informer, Timothy Redfearn (now residing in a Colorado jail for his freelance burglaries) that they will be more circumspect about their use of informers. At the same time, the Redfearn revelation dramatizes to the public both the fact that current FBI procedures make use of criminal tactics and that the informer situation is an issue in need of reform.

The Pitfalls in Litigation

Litigation entails some real risks: you may not win your case, especially in an area of law which is heavily weighted against the plaintiffs. Courts have made a practice of being generally deferential toward government agencies (especially when they claim to represent compelling state interests), they are shy about deciding political questions, and the intelligence system can use its secrecy to obscure and obstruct issues and evidence. Any suit involves the risk of "vindicating" the guilty; there are risks of court approval, such as happened in *Laird v. Tatum*,[6] where the Supreme Court decided it was alright for the Army to compile dossiers on civilian political activities.

While the award of money damages should be a substantial deterrent to future officials there has been little of it so far. If it comes, it could provide a great impetus to the campaign against government spying, as Ralph Nader's settlement for GM's spying on him provided the financial base for his public interest operations.

But unless and until a suit is won, money is a problem. Law suits are long, complex, and expensive. The *Hampton* suit has been in progress for seven years now. It's lawyers don't have the funds to pay for a transcript of the lengthy trial. And since the suit was filed, the political context has shifted and the Panthers no longer have the political vitality they once had.

New legislation could make the civil courts a better forum for protecting political rights.[7] For instance, statutory provisions for attorneys fees, including interim awards, could be enacted.

And finally, we do not know how effective court orders against the intelligence units and their officials could turn out to be. Under cover of secrecy,

neither the courts nor the public can have much assurance that they will be obeyed.

Lawsuits and Publicity

With the risks and limitations that are part of lawsuits, they should be approached not as ends in themselves (which they can be if they win big), but as an organizing tool along the way. Class actions[8] can generate enormous community support for reform, but these suits also require a lot in the way of financial resources in order to carry them through. But if your class discovery[9] produces files on a quarter of a million people, you have found a built in base of support which can be organized.

From the outset, lawsuits should try to draw together a broad range of political interests. The *Benkert* suit in Michigan[10], almost by accident, has mostly anti-war people as its named plaintiffs; its attorneys have advised other suits to include other political interest groups, such as women, blacks, and labor.

Organizing the Issue for the Press

Winning a case is not the same thing as reforming an issue. Unless information about the suit goes out to the press, its life in court can go by virtually unnoticed.

Intelligence Agency Manipulation of the Press

The ways the intelligence agencies maneuver press coverage is one of the things which could prevent the recent revelations from leading to effective reforms. It is true that the press covered the official investigations, like scandals generally, with a certain amount of enthusiasm. But it is likewise true that the intelligence bureaucracies have been effective in using the press to complain about their press coverage. They complain at length about "leaks" of intelligence information, but quietly fail to point to one that has damaged the national security rather than their public image.

Without saying so in so many words, they have taken the position that any discussion of their activities which they do not control will jeopardize the security of the nation.

The press for the most part has been willing to accept the agencies' complaints at face value. The controversy over the CIA budget is such an example. The budget should be open to see where the money goes — what proportion, for instance, has been turned back against Americans? It is said that they have washed their hands of the domestic intelligence business, but how much is spent tailing Americans overseas, and carrying out operations through the other loopholes which remain? Instead, the line the CIA pushes is that the world is too dangerous for making public even gross budget figures. The budget figures, which are secret in order to prevent debate about the way that money is being spent, are kept secret because the Russians by some unspecified process will allegedly be able to figure out vital secrets.

The CIA's handling of the Richard Welch assassination in Athens a year ago is another example of controlling public opinion by feeding the public only what it wants us to know. Welch himself had been warned by the CIA that it was dangerous to live in what was publicly known to be the CIA Station Chief's house, but he liked the house and chose to live dangerously. When he was killed, however, the CIA did not mention that fact but the generally irrelevant detail that his name had been mentioned six months earlier as a CIA/Latin American agent in a magazine called *Counterspy*. The conclusion which they drew for the press was that domestic debate about CIA operations would lead to the killing of CIA people.

The FBI has its own ways of shaping press coverage. To cope with the obvious problem that the FBI's COINTELPRO had little to do with counterespionage, the intelligence agencies have produced a rash of recent and publicized arrests for espionage in this country. It creates an impression of a formidable espionage threat, but it does it by violating one of the basic tenets of counterespionage. Standard operating procedure recognizes that you cannot profitably arrest a spy. The interests of national security are better served by recruiting spies as double agents, by feeding them false information, and/or watching for further espionage contacts. For the purposes of manipulating public opinion, the intelligence agencies have been willing to sacrifice these opportunities in order to look as

if their counterintelligence threats were a plausible justification for what they were doing.

A final set piece in the discussion of intelligence operations is that because they are there to deal with terrorism, their critics are in effect advocating violence. This is in largely fabrication, but the press generally lets such Bureau comments pass without comment. For example, the FBI has used agents provocateur to create the violence that they need in order to get the support of a frightened public. Even without accusing the FBI of creating more violence than it prevents, their definition of potential terrorism is elastic in the extreme. FBI Director Kelley has testified that the slogans to "Free the Oglala Four" were being used to incite a jailbreak.

The Government Accounting Office report on FBI effectiveness could not find indications that the FBI was successful at preventing a single act of genuine terrorism. When confronted with the SLA or a list of fugitives who know that they have a great deal to hide, their successes have been conspicuous in their absence.

It has been with good reason that the intelligence agencies take the position that failures are trumpeted while successes are unheralded. The campaign against Martin Luther King, Jr. was a failure in that it did not prevent his being awarded the Nobel peace prize — the debacle of a program against an apostle of non-violence has become an example of a trumpeted failure. What goes unheralded are the record of successes — that none of the people on the list of potential black messiahs (King's among them) is still alive. This can hardly be by coincidence alone, but the details may never be known.

This brings us to the final element of the intelligence agencies' posture before the press — that there is nothing much left to reform. There are several components which make up this press line.

First, they maintain that simple revelation has been enough to end their carrying out the same questionable activities in the future. They do not mention that revelation can as easily be seen as a signal to keep their secrets better.

Second, by saying that the situation is now reformed, they short circuit some of the necessary political conclusions. There is apparently less political repression going on just now, but there is also less political activity. While it may not be possible to prove to determined skeptics that secret police activities successfully ensured that the momentum of the anti-war movement would not be able to survive the end of the Vietnam war, this is a point which is not seen in the conventional press.

Instead, the agencies prefer to feed the press the impression that they have actually been too inept to be dangerous. They released vast quantities of data about their unsuccessful assassination attempts on foreign leaders; they avoid saying anything about the lower echelons in foreign countries who they have one way or another disposed of. Operation Phoenix left (by Colby's count) 20,000 dead, but the CIA preferred to divert attention from such successes by releasing a mass of documentation about trying to make Castro's beard fall out. As a gambit in shortcircuiting reforms, the CIA prefers to take egg on its face than to be taken too seriously.

Domestically, the situation is similar. The press is told about the Chicago red squad's wasting its time compiling a dossier on such dubious dissidents as the Episcopal Bishop of Chicago, which is outrageous but silly. But the press has paid little attention to the assassination of Fred Hampton, which is outrageous and deadly serious.

The Press As a Resource for Confronting Issues

The goal of press coverage is to change the political climate. A large proportion of the public still believes that if you are not doing anything wrong, it makes no difference if the government checks up on you. Yet the record shows that there is no such thing as innocent political surveillance, and this fact must be brought home.

The first step is to convince the public that political surveillance is everyone's problem, that anyone engaged in any political activity can have a fat dossier on them. The *ACLU/Alliance* lawsuit in Chicago got some of the subjects of the files which were released in that suit to go public. The fact that people whose political interests are on the order of Albert Jenner's (Minority Counsel to the Senate Watergate Committee) should make the public realize that red squads have been into everyone's business.

Once you establish that it is a problem which affects everyone, you have to counter the disinformation campaign of the intelligence agencies and show that it is still going on and that it is still dangerous.

The Socialist Workers Party lawsuit offers examples of how this can be worked out in practice. When the Denver office of the SWP was burgled last summer, they called in the press to accuse the FBI. With the lawsuit as a prod, the fact that the burglar was an FBI informer broke open. The small furor which this generated in the press meant that the government had to respond, and the affair culminated with the Attorney General announcing that the 40 year investigation of the SWP was drawing to a close — sort of. What the AG actually meant is that while they weren't going to in-

vestigate the *organization* any more, they would investigate *individuals* in the organization. But the press coverage prodded the AG into giving the SWP some useful public concessions. First, it meant that the government has admitted it doesn't have the authority to spy on the SWP; and second, it demonstrates that the litigation has not been mooted by the passing of time, that the threat is still going on.

An additional problem is getting the press to interpret what the executive branch says. They ordinarily accept the notion that news is what government officials say that it is. For example, when Ford handed down a new executive order[11] to (he said) place strict controls on the intelligence agencies, the press reported it the way the White House told it. Yet it was obvious that the EO was riddled with so many exceptions that it restricted only drug testing on unsuspecting Americans and assassination, and authorized virtually everything else.

Press coverage can produce political results. The CIA's manipulation of the Welch murder is one such political success, while in Chicago, the election defeat of Hanrahan (the States Attorney who set up the Hampton murder) is a win on the other side. It is important to ensure political consequences for those who keep the intelligence system going.

And to an extent it is easier than might be thought. In the *ACLU/Alliance* lawsuit in Chicago, the judge ordered the government to stop spying on the legal team in that case. The defendants appealed the decision — stating in effect that they have a right to spy on lawsuits in progress. Even the *Chicago Tribune*, which has been an apologist for many of the red squad activities, editorialized against this.

Getting the Word Out

But one of the frequent complaints has been that the local press simply does not ordinarily pay enough attention to what happens in the lawsuits. The Michigan *Benkert* suit has established its own newsletter to keep interested parties informed of what is going on. At the same time it is a tool for generating funding to carry on the suit.

Reaching the national press is in some ways easier. In Washington, there is something which can be called an "intelligence beat" — reporters who are looking for newsworthy items, who know what is new and what isn't, and who want to show their editors that there is more than enough going on to justify keeping them on the issue.

The Center for National Security Studies in Washington is in a position to bring new information to the attention of the national press. If people involved in lawsuits around the country contact the Center, it will be possible to put out a press release at the same time in both the city where it originates and into the national media. Those interested should contact Susan Kaplan, 122 Maryland Ave., NE, Washington, DC 20002, (202) 544-5380.

Reform Legislation

Litigation against the operations of intelligence units can only go so far. Although the government may be styled the defendant, it is the plaintiff who is on the defensive. The kinds of relief which a lawsuit can produce is limited by the state of the law on the issue.

What is needed is reform legislation — organizing against political spying has to center around the establishing the right to political space. If legislation is not enacted, self-issued investigative guidelines — a pseudo-solution which sounds good but changes little — will be passed off as reform.

The Center for National Security Studies has participated in drafting legislation for an FBI charter, and has now come up with a draft model of anti-surveillance legislation, for state and local governments to cope with the red squad problem.

Copies of the bill and other materials are available from Jerry J. Berman, CNSS, 122 Maryland Ave., N.E., Washington, DC 20002 (202) 544-5380. Feedback from the public is welcome. To act as a clearinghouse for what is taking place around the country, Berman would also like to be sent copies of pending legislation, investigatory guidelines, and government reports on red squads which other people working in this area may have.

Legislation to curb the activities of a political police must (1) prohibit political surveillance, (2) regulate any police operations which may also intrude on First Amendment activity, and (3) provide an antidote to the police use of secrecy to conceal their operations. Briefly, the major points of the model statute are laid out below.

End Police Authority to Investigate Politics

- *Restrict Police authority to investigating* only *crimes, and only where there is a reasonable suspicion to believe that a crime has been, is being, or is about to be committed.*
- *Abolish police intelligence units or red squads.*
- *Repeal "speech crimes," which limit and punish speech that is protected by the First Amendment.*
- *End political surveillance,* i.e., *collecting, main-*

taining, or disseminating information on political activities.
- *Outlaw police harassment of lawful political activity.*
- *Define police duties at planned demonstrations as facilitating the public's right to petition.*
- *Ban police cooperation with other public agencies or private groups (such as LEIU) to do what is forbidden by statute.*

Restrict Police Tactics in Criminal Investigations

- *Prohibit selective criminal investigation directed at persons or groups because of their political activities.*
- *Repeal all electronic surveillance; or in the alternative, enact strict limitations, including a judicial warrant with provisions to minimize invasion of privacy.*
- *Require a judicial warrant for using informers or undercover agents in criminal investigations.*
- *Ban police entrapment* (e.g., *agents provocateur).*

Citizen Access to Files

- *Require that when an investigation is ended, the subjects of informer surveillances be notified of and given access to the files.*
- *Give citizens the right to seek correction or deletion of false information in their investigative files.*

These last provisions of the draft bill — which give a right of notification and correction — insure that the other restrictions on police operations will be honored. This bill reverses the current situation; in the future, police will have to assume that their decisions and procedures will be scrutinized for abuses of power.

After the Conference: Putting Together Resources

This discussion has only touched lightly on some of the organizing tactics, interests, experiences, and resources that were shared at the Conference Against Government Spying. The details of putting together a movement from scattered lawsuits, sporadic press coverage, and an assortment of proposed reforms remain to be worked out.

But the Conference has brought together resources that are now available in three areas which can generate reform. To facilitate action in the courts, it has produced a litigation manual and the start of sharing future developments. To help generate coverage in the press, it has offered the beginnings of a method for getting local developments into the national press. And finally, to help get new laws passed, the Conference has provided the start of a coordinated nationwide effort for legislative reform. The final goal — whether the right to personal political space can be eked out of a political police system — is still the only proof of effectiveness, but the necessary beginnings are underway.

FOOTNOTES

[1]People wanting a comprehensive treatment of such litigation should get the Conference's excellent manual, *Pleading, Discovery, and Pretrial Procedure for Litigation Against Government Spying: Conference Handbook*, by Robert C. Howard and Kathleen M. Crowley, with contributions from Sonja Baesemann, Lance Haddix, Susan Sekuler, and Christine Wheelock. Copies available from the Better Government Association, Room 1118, 360 North Michigan Ave., Chicago, Illinois 60601. Price: regular/$15; tax exempt organizations/$7.50. PREPAID orders only.

[2]The Cook County Grand Jury Report on Chicago red squad operations is reprinted in the January 1976 issue of FIRST PRINCIPLES. Use the order blank on page 15 for this and other back issues of FP.

[3]*Socialist Workers Party v. Attorney General*, 73 Civ. 3160 (S.D.N.Y.). See the September 1976 and January 1977 issues of FIRST PRINCIPLES.

[4]*Alliance to End Repression v. Rochford*, No. 74 C 3268 (N.D. Ill.) and *American Civil Liberties Union v. City of Chicago*, No. 75 C 3295 (N.D. Ill.) (consolidated for discovery). See the January 1977 issue of FIRST PRINCIPLES. This issue also contains a docket of red squad cases in litigation across the country.

[5]*Hampton v. Hanrahan*, No. 70 C 1384 (N.D. Ill.) For a discussion of the facts behind the *Hampton* suit, see "Fred Hampton: A Case of Political Assassination," by Susan Cantor, FIRST PRINCIPLES, November 1976.

[6]*Laird v. Tatum*, 408 U.S. 1 (1972).

[7]See the December 1975 issue of FIRST PRINCIPLES for a discussion of possible legislative changes in the law dealing with political surveillance.

[8]A class action is a lawsuit in which plaintiffs who are named on the court papers also seek to establish that they represent a broader group of people; one case can then represent literally thousands of people. For a discussion of class action suits, see the May 1976 issue of FIRST PRINCIPLES.

[9]Discovery is the process whereby a court order gives one side in a suit access to evidence which the other side has in its possession. This includes access to records and the right to ask questions about the activities which are involved in the lawsuit.

[10]*Benkert v. Michigan State Police*, No. 74-0230934 (Wayne Cty. Cir. Ct.) See the January 1977 issue of FIRST PRINCIPLES.

[11]See the March 1976 issue of FIRST PRINCIPLES for a discussion of what the Ford EO actually does; see also the Center for National Security Studies' INTELLIGENCE REPORT, issue no. 2, available from CNSS, 122 Maryland Ave. NE, Washington, DC 20002.

Did the CIA Open Your Mail?

If It Did, Here's What You Can Do

BY MELVIN L. WULF

From 1953 to 1973, the Central Intelligence Agency, in a secret operation given the code name HTLINGUAL, opened, read and copied 215,000 first-class letters that were mailed by or addressed to American citizens and residents. The program flagrantly violated criminal statutes forbidding interference with the mails, and also violated the Fourth Amendment's prohibition against illegal search and seizure.

In a nationwide, coordinated litigation campaign, the ACLU and its affiliates have filed eight lawsuits designed to win money damages for the tens of thousands of persons whose mail was opened and read, to secure an injunction prohibiting repetition of any such program, and to require the CIA and the FBI (to whom copies of thousands of the opened letters were transferred) to purge their files of every last vestige of the program by returning copies of all the letters to the persons to whom they belong, and by destroying all other file material that grew out of HTLINGUAL.

Two classes of lawsuits have been filed. The first, which was filed in the U.S. District Court in Rhode Island in the summer of 1975, is a suit for money damages against the high-ranking CIA officers responsible for the mail-opening program. The suit also seeks injunctive relief.

The other seven lawsuits, filed from Hawaii to Connecticut, are novel in civil liberties terms because they are based upon the Federal Tort Claims Act and are directed against the United States itself. Though the United States is generally immune from damages, the Federal Tort Claims Act is one statute which has waived this immunity and allowed damage suits for certain kinds of harmful conduct.

The advantage of suing the United States for damages is money. Since there is more of it in the U.S. Treasury than in the bank accounts of former government officers, the thousands of persons whose privacy was trampled upon by the CIA will be able to receive more realistic compensation. In addition, we believe that a heavy judgment against the United States will discourage future illegal conduct by government agents.

The lawsuit for damages against the individual officials and one of the tort claims actions against the United States are brought as class actions, though neither has yet been formally certified as such. There are some obstacles to securing class action status in the tort claims case, but we believe we may be able to overcome them.

However, in case class action is denied, we want to have the participation of as many named individuals as possible. The ACLU therefore is offering assistance to anyone who knows, or believes, that their mail was opened by the CIA, and who want to guarantee their right to damages if the courts eventually rule in our favor.

The prerequisite to such participation is to know for a fact that the CIA has opened your mail. The CIA will actually give you that information if you write to the **FOIA Coordinator, CIA, Washington, D.C. 20505** with a short letter demanding to know "under the authority of the Freedom of Information Act" whether your mail has been opened. If it has, the Agency, as it has done in the past, will not only say so, but will even send you copies of your purloined letters.

You must then submit a claim for damages to the CIA. A request to the legal department of the national ACLU will produce a small packet of materials and forms which will explain the steps you must take in filing the claim and the steps the ACLU will take on your behalf after your claim is rejected, as they all have been.

(Write: **Legal Department, ACLU, 22 East 40th Street, New York, N.Y. 10016.** A stamped, self-addressed envelope would be appreciated.)

Though we do not guarantee that our litigation will succeed in compensating the victims of the CIA mail-opening program, the prospects are sufficiently good to make the effort worthwhile. At the very least, a flood of demands for damages will impress the government with the fact that the public objects strongly to the gross and fundamental invasion of privacy involved in the illegal mail-opening program. ■

Mr. Wulf is the former ACLU Legal Director and Chief Counsel in mail opening cases.

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The Law Enforcement Intelligence Unit: A Fact Sheet

BY CHARLES MARSON

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A "Private" Spying System With Public Money

The Law Enforcement Intelligence Unit (LEIU) is the least known and least controlled element in the U.S. intelligence community. Under the rubric of collecting information on "organized crime" and "terrorism," it operates a data system which links the intelligence unit (what used to be called red squads) files of nearly every major city in the nation as well as some in Canada. Yet the elaborate structure of this "private" organization — four regional zones, national and zone officers, a board of directors, bylaws — is answerable to no government entity. Its budget is hidden in the budgets of its members, but not subject to review by any of the governmental bodies which provide funds for law enforcement. It is essentially outside normal political restraints.

LEIU has managed this status by asserting that it is really a private organization among people who happen to also be law enforcement officials and whose activities are clearly supported by public funds. The nationwide headquarters of LEIU is in Sacramento, California, in the state Department of Justice. LEIU relies heavily on its elite, old-boy network whose membership rules resemble those of a private country club. Conventions are held frequently to establish and maintain personal contacts.

It has over 225 member agencies in the United States and Canada. Each member designates an "LEIU representative" who is the contact person and who is responsible for security of data. Member agencies are obliged to trade services (*e.g.*, a subject of interest flies from city A to city B; the LEIU member at B is obliged to trail the subject at the request of the member at A), but the primary function of the LEIU is to serve as an index and pointer system for the obtaining of secret "intelligence data" on individuals and organizations suspected of involvement with "organized crime." It allows local police in city A to locate and retrieve information on a subject in the files of local police in city B.

The American Civil Liberties Union of Northern California has a lawsuit pending in a state court in Sacramento which seeks records relating to LEIU under the state version of the Freedom of Information Act. In that suit, the following information has emerged; much of it is taken from the pleadings in that case (*ACLU v. Younger*, No. 262181, Sacramento Superior Court).

The major source of public information concerning the LEIU is the report of the Subcommittee on Constitutional Rights (the "Ervin Committee") of the Senate Judiciary Committee concerning hearings it held in 1974 on bills relating to criminal justice data banks.[1]

The LEIU presented to the Ervin Committee two witnesses and hundreds of pages of documents. Donald H. Carroll, of the Orange County (California) District Attorney's office, appeared as general chairman of LEIU. (I/474). He described the LEIU's founding in 1956 and its country-club rule that a member needs one sponsor and three members' endorsement to join. (I/475).

A System for Political and Personal Information

The application to the Law Enforcement Assistance Administration for a computer-based index [Interstate Organized Crime Index (IOCI)] files to the LEIU states that "[t]he LEIU data base was comprised of persons of interest to intelligence units *other* than organized crime subjects." (II/517). Conversion of LEIU manual files to the federally funded IOCI computerized index, which was restricted to "public record information," caused LEIU members to complain that "the constraints as to the types of subjects that were eligible for IOCI eliminated from intelligence files, dissidents, radicals, revolutionaries, and other similar types." (II/518). It stated that local LEIU units keep records of "home and . . . property ownership, hangouts and places frequently visited, family relationships . . ." and the like. (II/520). References to "business associates" and "community associates" as file entries were frequent. (II/521). When the

LEIU system was converted to IOCI there were 2,794 "organized crime principals" and 18,905 "aliases, nicknames, associates and businesses" — a ratio of about one to nine. ((II/498).

In 1975 the Houston police dropped out of the LEIU[2], allegedly because they had repeatedly been asked for information on persons with no criminal ties. An Associated Press dispatch of May 14, 1975 quotes a Houston official as saying:

> *Often just being controversial was enough to earn yourself a criminal intelligence file. It was obvious that municipal departments across the country were developing unbelievable files.*

Investigation of Organized Crime: No Standards

Carroll also testified that the LEIU keeps files on all sorts of persons suspected of specific crimes, including "other organized crime subjects of interest to law enforcement," and persons "who aid, directly or indirectly," those subjects. (I/474). He also testified that the system included those "[a]ssociated with organized crime principals and associates." (I/478). Thus a subject of a file in the LEIU can be an associate of an associate of a principal suspect.

Michael Capizzi, Legal Counsel for the LEIU, (I/479), then testified the "organized crime figure" treated as a principal need not have a conviction record, or even an arrest record. (I/485-86). "Associates" of these "principals," Carroll said, could themselves be innocent of crime and could simply be "family relationships" or "business associates." (I/487). The category of "associates," testified Carroll, includes attorneys who represent the people in the files. (I/487). In answer to the question "How do you know he is really in organized crime if he does not need an arrest or conviction?" Carroll said: "Rely on the integrity of the member agency who submits this card, that what is on his card is correct." (I/486). In answer to the question "How do you make the decision as to who is an associate and who is not an associate?" Carroll said: "Personally — of course, each department has to make their own decision." (I/487).

This testimony by the LEIU General Chairman and Legal Counsel — that "organized crime principals" who have never been arrested are included in the system at the standardless discretion of LEIU members along with their "associates," the associates of their associates, and their families, business associates and lawyers — was fully supported by the voluminous descriptive materials submitted by LEIU to the Committee.

Establishing a Clearinghouse on LEIU Operations

The Northern California ACLU wants more information on LEIU, and will serve as a clearinghouse for it. Contact Charles Marson,

American Civil Liberties Union
814 Mission Street, Suite 301
San Francisco, California 94103
Telephone: (415) 777-4880

FOOTNOTES

[1]The full citation is *Hearings Before the Subcommittee on Constitutional Rights of the Committee on the Judiciary*, U.S. Senate, 93d Cong., 2d Sess., on S.2542, S.2810, S.2963, and S.2964, March 5, 6, 7, 12, 13, and 14, 1974 (two volumes). This source is cited here as "I/(page)" or "II/(page)."

[2]A fairly factual expose of the LEIU, the Houston Police situation, and the red squad problem in general was reprinted in the December 1976 issue of *Penthouse* magazine.

Each month, **First Principles** *will now carry abstracts of new documents which will be available from the library of the Center for National Security Studies at a cost of 10 cents per page. People will also be interested in ordering the Abstracts of Documents with the order blank on page 15.*

New Documents Available

from the Center for National Security Studies Library

Exhibits from deposition of FBI Director Clarence Kelley, December 3, 1976, in Socialist Workers Party lawsuit (101 pages). In addition to the Levi guidelines on domestic security investigations and various news articles and press releases, the exhibits included two cables concerning the termination of the investigation of the SWP by the FBI. The first cable, dated September 13, 1976, directs that investigations of the SWP be discontinued except for those members who are "likely to use force or violence in violation of a Federal law." The second cable, dated September 23, 1976, clarifies the directive, stating that "an investigation cannot be continued because of an individual's affiliation with the SWP."

Report of the Department of Justice concerning its investigation and prosecutorial decisions with respect to Central Intelligence Agency mail opening activities in the United States, released by Department of Justice, January 13, 1977 (57 pages). This document is the legal case given by the Justice Department for not prosecuting individuals involved in the CIA's mail opening program from 1953 to 1973. Document includes a summary of the origins, conduct and termination of the mail opening program, as well as the grounds for prosecution, possible defenses, and arguments against prosecution.

Director of Central Intelligence Directives from 1946 to present, (285 pages). In response to an FOIA request for all Director of Central Intelligence directives, 62 such documents have now been released to CNSS in their entirety, and 51 such documents with deletions. DCIDs are procedural memos — the programming, initiation, and normal preparation of national intelligence estimates; the "Controls for Dissemination and Use of Intelligence and Intelligence Information" (explanation of categories of classification); and procedures and qualifications for receiving "intelligence community medals and awards."

In The News

December 31, 1976 The House Select Committee on Assassinations reported today that its preliminary investigations of the deaths of President Kennedy and Rev. Dr. Martin Luther King, Jr. had produced enough unresolved questions, including whether the CIA deliberately avoided furnishing critical information to the FBI, to require continuing its investigation of the murders. (*New York Times*, 1/1/77)

January 2, 1977 Justice Department prosecutors who have been investigating alleged corruption in the FBI since last February have reportedly decided that they cannot bring major criminal charges against anyone. Although the prosecutors found a pattern of impropriety reaching back many years, because of the negligible amount of money involved, the statute of limitations having run on many crimes, and "fairness," it was decided not to prosecute anyone. The investigation focused on alleged theft of government property, diversion of funds for unauthorized purposes, and kick backs by private companies to FBI employees in charge of buying electronic and other equipment. (*New York Times*, 1/3/77, p. 1)

January 5, 1977 Attorney General Edward Levi has issued new guidelines to govern the FBI's use of informants. The guidelines state that before an informer is used, the FBI must take into account factors such as the risk of illegality, the seriousness of the investigation and whether the information can be obtained through other means. According to the guidelines, informers must be instructed that they cannot participate in violent acts, use illegal techniques, initiate plans to commit crimes or participate in them — "except insofar as the FBI determines that such participation is necessary to obtain information for purposes of prosecution." According to FBI Director Kelley, the guidelines incorporate "many of the long-standing FBI policies and procedures relating to handling of informants." The guidelines do not have the force of law; they may be changed secretly or publicly by any Attorney General at any time, and there are no criminal penalties for their violation by the FBI. (*Washington Post*, 1/6/77, p. A1)

January 5, 1977 In connection with 2 red squad lawsuits in Chicago, Chicago police turned over documents showing that they spied on thousands of Chicagoans, including some of the city's most prominent citizens, some of whom have authorized release of their dossiers. Among the dossiers now made public are those on Albert Jenner who was minority counsel to the House Judiciary Committee during the impeachment hearings; Stanley Kaplan, University of Chicago law professor; and Rt. Rev. James Montgomery, bishop of the Episcopal Church of Chicago. This is the first time that the contents of specific police dossiers have been revealed. Specifically, the Chicago police turned over more than 112,000 index cards on individuals and admitted destroying cards bearing 105,000 more names. (*Washington Post*, 1/6/77)

January 6, 1977 A federal grand jury in Miami has concluded that Operation Leprechaun, the Internal Revenue Service's intelligence campaign, did not involve violations of taxpayers' civil rights by IRS agents. Leprechaun was carried out by the IRS intelligence division during the early 1970s to gather information on the sex and drinking habits and political activities of prominent Miami residents, including city officials and judges. According to the Senate Intelligence Committee, Leprechaun involved "the worst examples of abuse" associated with IRS intelligence gathering (*New York Times*, 1/6/77, p. 1)

January 7, 1977 The Justice Department refused to tell Philip Agee's lawyer whether he will face criminal espionage charges if he returns to the United States. Agee, a former CIA agent and author of *Inside the Company: CIA Diary*, is facing deportation from England where he has lived since 1969. (*New York Times*, 1/8/77)

January 8, 1977 The head of the New York City field office of the FBI, J. Wallace LaPrade, has been subpoenaed by the Justice Department to appear before a Federal grand jury investigating recent FBI illegal activities including burglaries and unauthorized wiretaps. The government prosecutors are said to be trying to determine whether LaPrade approved any burglaries and, if so, whether he did so on his own or with authority from Bureau headquarters in Washington. (*New York Times*, 1/8/77)

January 9, 1977 A US intelligence source has revealed that the CIA gave an anti-Castro Cuban group a container filled with African swine fever virus in 1971, which was then smuggled into Cuba, causing the slaughter of 500,000 pigs to prevent a nationwide epidemic. The outbreak was labeled "the most alarming event" of 1971 by the UN Food and Agricultural Organization. (*Washington Post*, 1/9/77)

January 9, 1977 Colleagues of Assistant Professor Michael Selzer, of Brooklyn College, accused him of working clandestinely for the CIA and using his academic credentials to seek out contacts abroad. (*New York Times*, 1/9/77) The Political Science Department decided the following week that Selzer's agreement to gather intelligence covertly for the CIA "had violated standards of academic integrity and 'would warrant removal.'" (*New York Times*, 1/13/77)

January 10, 1977 Timothy Redfearn, an FBI informant who has admitted breaking into the Denver offices of the Socialist Workers Party, was sentenced to a maximum of 10 years in the Colorado State Penitentiary. In an unusual action, the grand jury that indicted him released over 700 pages of evidence and testimony relating to their investigation. The investigation is believed to be the first ever by a state grand jury looking into possible criminal activities by FBI agents. (*New York Times*, 1/10/77)

January 11, 1977 Former U.S. Ambassador to Chile, Edward M. Korry, testified before the Foreign Relations Committee that high officials of three administrations and ITT had lied to Senate Committees about US intervention in Chile. Korry testified that Carter nominee Cyrus R. Vance "played a not unimportant role" in helping forge links between government and business in the effort to oust Salvadore Allende. (*New York Times*, 1/12/77)

January 11, 1977 During his confirmation hearings as Secretary of State, Cyrus Vance testified that he would restrict covert U.S. intelligence operations overseas to "the most extraordinary circumstances," that covert operations should require approval from a Cabinet committee, and that "the President of the United States himself should sign off in writing, saying that he believes this vital to the national security." (*Washington Post*, 1/12/77, p. A1)

January 12, 1977 According to a GAO report, the U.S. Bureau of the International Criminal Police Organization (Interpol) is freely providing information about U.S. citizens to the national police of 124 other countries. The report revealed that there is "no absolute control over the distribution of information disseminated abroad", that those requesting the information "did not explain why the request was made," and that most requests for information involved individuals with no prior criminal records. Rep. Moss said that the report "raises very significant questions as to the continuing participation of the United States until Interpol comes before Congress with some definite guidelines." (*New York Times*, 1/13/77)

January 14, 1977 Richard Helms, former Director of CIA and Ambassador to Iran, was notified today that he is a target of investigation by a federal grand jury. The grand jury is probing allegations that Helms and members of ITT were involved in a conspiracy to fabricate and coordinate statements before the 1973 Senate investigation of US covert activities in Chile. (*New York Times*, 1/15/77)

January 15, 1977 Attorney General Edward H. Levi announced new guidelines for domestic operations of the Drug Enforcement Administration will be in full effect by January 31, 1977. Among the provisions are guidelines dealing with the use of informants, limitations on undercover operations, and circumstances under which electronic surveillance may be used.(Department of Justice, press release, 1/15/77)

January 17, 1977 Theodore C. Sorensen, stating his conviction that "The U.S. Senate and the intelligence community is not yet ready to accept as Director of CIA an outsider who believes as I do," announced to the Senate Intelligence Committee his wish to withdraw his nomination as CIA director. (See Point of View by Morton Halperin, p. 16) (*New York Times*, 1/18/77, p. 1)

January 24, 1977 In response to articles appearing in the Manchester Guardian that the book "Chile's Marxist Experiment," authored by British journalist Robert Moss, was commissioned by the CIA, Rep. Don Edwards (D-Cal.) stated that publication of such a book in the United States would be a "serious violation of the First Amendment." According to the *Guardian*, the book had been commissioned by Forum World Features, a propaganda operation purportedly subsidized by the CIA. (*New York Times*, 1/25/77, p. C8)

January 24, 1977 Secretary of State Cyrus Vance has prohibited secret monitoring of phone conversations at the State Department, a common practice under Secretary of State Kissinger. One State Department official said that Vance and his deputy, Warren Christopher, have "a deeply held conviction" that the eavesdropping "should not be done." (*Washington Post*, 1/26/77, p. A3)

January 25, 1977 Griffin Bell was confirmed as Attorney General in a 75-21 vote by the Senate. Five Democrats voted against Bell, whose nomination was opposed by civil rights groups. It is expected that the Carter administration will retain FBI Director Clarence Kelley until Jan. 1, 1978 so that his pension can be computed on the basis of his salary as FBI Director. (*Washington Post*, 1/26/77, p. A1)

January 25, 1977 The House Select Committee on Assassinations, which has to be re-created by the new Congress, has run into problems that make its future questionable. It is expected that the Committee's proposed $6.5 million will be cut, perhaps by more than half and there is some doubt as to whether the inquiry into the deaths of President Kennedy and Rev. Martin Luther King, Jr. will proceed at all. (*Washington Post*, 1/25/77, P. A1)

January 26, 1977 President Carter has issued the same kind of prohibition against secret monitoring of phone conversations at the White House that Secretary Vance has issued for the State Department. (*Washington Post*, 1/27/77, p. A6)

January 26, 1977 In a hearing before the Privacy Protection Study Commission, the Wackenhut Corp., the third largest private detective firm in the U.S., admitted that it uses political and personal information on individuals supplied by the Church League of America, a right-wing organization dating back to before the McCarthy era. The Church League calls itself "the largest private research organization and information center on operations of the Communist Party and the New Left movement in the entire USA," and has an estimated 6 million files containing unverified data on authors, speakers, petition signers, and others. Both private detectives and private groups such as the church league are not subject to federal laws governing the government's intelligence agencies, even though they are staffed by former intelligence and/or law enforcement officials. (*Washington Post*, 1/27/77, p. A3)

January 27, 1977 According to government documents assembled by a Congressional subcommittee, Warren M. Christopher, Carter's choice for the post of Deputy Secretary of State, helped draw up plans that led to widespread surveillance and disruption of the anti-war movement of the 1960's. Army records show that while Deputy Attorney General Christopher called the Pentagon to ask for pictures of demonstrators outside the 1968 Democratic National Convention in Chicago which were taken by a covert Army unit. (*New York Times*, 1/28/77)

January 28, 1977 Senator Gary Hart (D-Colo.) announced today that the Senate Intelligence Committee had been informed of about a half dozen covert operations by the CIA over the past few months, but had not vetoed any of them. "If we feel that it is outside bounds, we can go first to the President and express our doubts", the Senator explained. (*Washington Post*, 1/29/77, p. A3)

In The Courts

Bergman v. Kelley, No. G77-0006 (W.D. Mich., filed Jan. 4, 1977) (Complaint). Walter and Frances Bergman, who were part of a team of freedom riders beaten by the Ku Klux Klan in May 1961, have filed suit in U.S. District Court in Grand Rapids Michigan against FBI Director Kelley and other FBI officials for their alleged failure to stop the KKK beatings of civil rights workers. The ACLU-sponsored suit seeks $1 million in damages; the beating of Walter Bergman left him partially paralyzed and permanently confined to a wheelchair.

Cleaver v. Kelley, No. 76-795 (D.D.C., Dec. 22, 1976). In light of both Eldridge Cleaver's upcoming trial on charges including attempted murder and assault with a deadly weapon, and the findings of the Select Committee on Intelligence Activities that the FBI engaged in covert activities against the Black Panther Party, the Court concluded that "an exceptional and urgent need" does exist which justifies placing the Cleaver's Freedom of Information Act request for FBI records which would indicate official provocation, ahead of other requests. Plaintiffs' original request for an expedited release was denied but the Court of Appeals in its decision of November 23, 1976 (No. 76-1831) remanded the case to determine whether "some exceptional need or urgency" justifies putting Cleaver's request ahead of all other prior requests. The district court concurred with these grounds and so ordered.

U.S. v. AT&T, No. 76-1712 (D.C. Cir., Dec. 30, 1976). In a case involving a congressional committee subpoena for AT&T records relating to national security wiretaps, the Court declined to decide the matter and remanded the record back to the District Court for further proceedings requesting the parties to negotiate a settlement. Judge Levanthal's opinion suggested since the parties nearly reached a settlement the court did not have to decide at this time whether the President has an absolute right under the Constitution to withhold national security information from the Congress or Congress an absolute constitutional right to acquire such information.

Weissman v. CIA, No. 76-1566 (D.C. Cir., Jan. 6, 1977). In a ruling, apparently contrary to the intention of Congress, the Court said that in Freedom of Information Act Exemption 1 cases the District Court should not apply a *de novo* standard of review, but should merely determine whether the classification determination was reasonable and made in good faith. The Court also said that *in camera* inspection would be appropriate in cases where there was evidence that the classification determination was unreasonable or made in bad faith. However, the Court agreed with Weissman that the CIA is prohibited by its statutory charter from conducting domestic investigations (including those carried out under the pretext of offering the subject a CIA job) of U.S. citizens who have no connections with the Agency. Both sides are filing petitions for rehearing.

Dellums v. Powell, No. 76-1336 (D.C. Cir., Jan. 18, 1977) The U.S. Court of Appeals ruled that President Nixon's White House tapes must be produced as evidence in civil and criminal cases. The ruling came in the lawsuit filed by about 1200 persons arrested at the Capitol during the Mayday demonstrations in 1971. The tapes can be used in the more than 10 pending suits against Nixon for his wiretapping of government employees and journalists.

U.S. v. Donovan, No. 75-212, 45 USLW 4115 (U.S., Jan. 18, 1977). The Supreme Court, in reversing the Sixth Circuit Court of Appeals ruling, held that failure by the government to list all names on a wiretap application to the Judge issuing the warrant, was inadvertent, and did not mean that the conversations were unlawfully intercepted. The District Court in Ohio had suppressed evidence against four persons whom the prosecutors had failed to list. The high court said that the government's failure to comply fully with the deterrents in the law does not render unlawful "an intercept order that in all other respects satisfies the statutory requirements."

In The Literature

Articles

"The Forgotten Case of Sam Jaffe," by Sanford I. Ungar, *Columbia Journalism Review*, November/December 1976, p. 54. As a result of a Freedom of Information Act request, magazine and broadcast correspondent Sam Jaffee found that his brief encounters with the FBI and the CIA in the early 1950s labelled him as a one-time FBI informant and CIA operative.

"Controlling the Intelligence Agencies," by John H.F. Shattuck, *The Privacy Report*, January 1977. The Director of the Washington Office of the ACLU outlines the abuses of the FBI and CIA, suggests that the investigations themselves were manipulated by the intelligence agencies, and discusses the ACLU's reform proposals. Available from the ACLU, 22 E. 40th St., NY, NY 10016.

"CIA News Management," by Morton H. Halperin, *Washington Post*, 1/23/77. Discusses the CIA's control of coverage of the murder of Richard Welch as classic example of a CIA "disinformation campaign." The CIA neglected to mention to the press that they themselves had tried to talk Welch out of living in the Athens station chief's house, but when he was killed the CIA tied his death to publication of his name in *Counterspy*.

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national security are stamped classified, any information given to the press is drawn from classified documents. Yet the Sorenson affidavits hit the Inouye committee with great force, leading one member to state ominously that we cannot have a "leaker" as CIA Director. To understand why, it is necessary to explore the two levels at which the system of releasing classified information operates.

Lower level officials use a system of formal procedures and clearances. If one wants to make information public it is submitted to a public information office. From there the prepared statement or speech is sent to every office and department with any interest in the subject. If anyone objects to releasing something, it is removed from the statement unless someone else feels strongly enough to bring the issue to senior officials. This system is strongly biased toward secrecy and to control over information by those responsible for the program or activity being discussed. It is a system the bureaucrats like.

The alternative procedures are used by senior officials. They are often in situations in which they have to make on-the-spot decisions about what to make public. At press conferences, public hearings, and meetings with reporters, they will be pressed to defend their policies. Often they do so by making public information which was previously closely guarded. To take just two examples, Secretary of Defense Robert McNamara, tired of being accused of de-nuclearizing Western Europe, told a European press conference that there were more than 7,000 American nuclear weapons in Europe. President Richard Nixon, seeking to establish that an American reconnaissance plane shot down off the North Korean coast had not strayed over that country's waters, volunteered to the press that the United States had tracked Soviet radar tracking the American plane.

In both cases, the bureaucracy considered the released information highly classified and was appalled at the "leak." The bureaucracy dislikes this system with its bias toward disclosure and its lack of control. When the CIA and other intelligence agencies began to supply sensitive information to Congress, they indoctrinated the Congress with the rituals of the formal system. They did not want members of Congress to behave like senior appointed officials and make their own judgments about what should be made public. The intelligence agencies simply told Congress that nothing could properly be released without going through the formal review process. It was in this context that the Sorenson affidavit seemed so dangerous.

Reportedly, the Inouye Committee came out of this episode determined to move toward the enactment of comprehensive legislation to deal with classification and release of information. Such legislation is urgently needed but it will be of value only if it requires the disclosure of critical information and is strongly biased in favor of public release. In the meantime, we will remain dependent on the "leakers" to provide some glimpses behind the national security curtain. ■

Point Of View

(continued from page 16)

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Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.

JAMES MADISON TO THOMAS JEFFERSON, MAY 13, 1798

Point of View

The Sorenson Debacle

MORTON H. HALPERIN

The withdrawal of Sorenson's nomination as CIA Director remains shrouded in mystery. From what is publicly known, it is difficult to believe that a majority of the Senate Intelligence Committee and of the full Senate were ready to vote against the former Kennedy White House adviser.

In this time of persistent rumors and growing acceptance of conspiracy theories there are as many hypotheses to explain the mystery as one wants to hear: the intelligence community in fear of Sorenson's liberal views mounted a secret campaign, the AFL/CIO did him in, conservative outsiders worked effectively against him. All of these theories are logical and plausible, if not confirmed.

What is difficult to believe is that Sorenson's affidavits in the Pentagon Papers civil and criminal trials actually played a role in the first defeat of the Carter Administration. That they did demonstrates how far we have to go in moving away from the secrecy system which protects the abuses of the intelligence agencies and prevents public debate on critical foreign policy issues.

The two affidavits appear to state only what is well known to every observer of the national security secrecy system. Sorenson stated under oath that when in the White House his press briefings regularly drew on information from classified documents. He noted also that in writing his best-selling memoir on Kennedy he drew upon classified documents which he took with him from the White House and which he later donated to the national archives.

No one who read Sorenson's memoirs could have doubted that he drew upon documents which were marked classified when they were written. Yet even in those pre-Watergate days of the mid-1960s no one complained. Rather, the book was acclaimed as providing a unique insight into the presidency of the slain leader.

In his prepared statement before the Senate Intelligence Committee, Sorenson noted that he briefed the press at the express direction of the President, that his papers were shipped to New York by the General Services Administration, and that he cleared sensitive portions of his book with McGeorge Bundy, President Johnson's National Security Adviser.

Since almost all high level documents relating to